

## RANDOM ASSIGNMENT #44

John dre jennings

Hello

Overall my feedback is that I'm not seeing mention of the qualitative benefit for the inclusionary housing policy. The report works to provide balance in making sure the developer is able to realistically be more inclusive however the goal is that the developer should have an understanding of the importance of mixed income development. Of course from my lens I am a bit biased as I believe that affordable housing should be considered more especially with development projects that have received incentives such as tax breaks etc.

- 1) Is there a more brief summary of the report that can be pulled out of the larger report?
- 2) Also who were the 27 stakeholders? 2a) Are they inclusive of nonprofits, for-profits and developers that have successfully done mixed use development?
- 4) Will the next phase of the report include meeting with stakeholders?

The below items include some of my feedback. Let me know if you have any questions. Thank you.

- Baltimore Inclusionary Housing Requirements Ordinance

### Market Conditions

Market rate development feasibility is generally limited to core market locations and to rental apartments. **Although it is clear that including affordable units can be a challenging process; how can the report reflect areas and/or neighborhoods that may be a better fit for the affordable units?**

### Traditional Policy -**How can this finding be more fully investigated**

A traditional inclusionary zoning policy puts the onus for meeting requirements on the developer and could support a 5-10% affordability set aside with the provision of tax abatements for households earning 60-80 percent of area median income (AMI) in Baltimore.<sup>3</sup> This implies that despite a lower set-aside amount than the current policy (5-10 percent compared with 20 percent for projects with more than 30 units), a traditional policy would result in an increase in the production of affordable housing units over the current policy.

- Phase I report

**Compliance** - According to Baltimore Department of Housing and Community Development staff, unless an inclusionary unit receives federal or local subsidy, it is not tracked or monitored following completion. **What are some better options other than lottery system?**

**Outreach** **I would like to see more about how this will be developed**

Option #3. Traditional inclusionary housing requirements applicable to changing markets or around transit assets - **from my notes this was one of the best choices**

Recommendation - **How will these additional resources be implemented? Will resources be direct funding to the developer? Is there an opportunity for some creative financial strategy?**

SENT BY ELECTRONIC MAIL

October 29, 2021

Baltimore City Dept. of Housing and Community Development  
c/o Stacy Freed, [stacy.freed@baltimorecity.gov](mailto:stacy.freed@baltimorecity.gov)

Dear Ms. Freed:

Please direct this letter to the appropriate entities considering comments on the Baltimore Inclusionary Housing Requirements Ordinance, Draft Interim Report, Aug. 23, 2021 (“Report”). We apologize that we were unable to adequately convey our responses in the Konveio technology.

We appreciate the intent of the Report and agree with the initial conclusion that the existing Inclusionary Housing (IH) Ordinance as it is currently administered is wholly ineffective to achieve the important aim of integrating affordable housing into market-rate developments. Thirty-four units in the last 14 years is unacceptable.

All of Baltimore City benefits from the increased production of housing affordable at a range of income levels and in all neighborhoods. The separate-and-unequal (and inadequate) development of housing only in certain neighborhoods for families with incomes below 50% of Area Median Income – while new all-luxury complexes are built throughout the white L<sup>1</sup> -- is a disgrace that only deepens the racial and economic hyper-segregation that plagues Baltimore. We commend the City and the authors of the Report for attempting to tackle the obvious, longstanding deficits of the current inclusionary housing ordinance.

Nonetheless, we question key assumptions in the Report and strongly disagree with its recommendations:

- The Report does not address or include the analysis and recommendations provided in a memo dated April 4, 2019, from the ACLU of Maryland and Public Justice Center (2019 Memo), that recommends both administrative changes that would lead to greater unit production under the existing law as well as legislative changes that would make the law more effective. The 2019 Memo analyzes the text of the IH Ordinance itself – an analysis that is notably absent in the Report. For example, the Report states: “The inclusionary housing ordinance states that developers are entitled to be completely financially reimbursed by the City for each affordable housing unit.” See Report Appendix, July 2021 memo at 3. There is no such provision in the IH Ordinance itself, and the 2019 Memo makes clear that this is not the correct interpretation of the law. The 2019 Memo is attached hereto, and the undersigned support those recommendations as an alternative to those provided in the Report.

---

<sup>1</sup> See Dr. Lawrence Brown, *The Black Butterfly: The Harmful Politics of Race and Space in America* (2021), and other publications.

- A core problem is that the Report adopts the underlying paradigm/assumption that developers are entitled to all existing forms of city subsidy for the development of market rate housing, and any offset for the cost of including affordable units must come on top of those subsidies, e.g. High Performance Market Rate Tax Credit, PILOTs, TIFs, even rezoning. This paradigm means that the value of the subsidy or zoning change is not calculated or considered as offsetting the cost of compliance with the affordability requirements. There is nothing in the IH Ordinance that requires this assumption. Instead, as detailed in the 2019 Memo, DHCD should instead consider whether the public subsidy or zoning change is “insufficient to offset the financial impact of compliance.” § 2B-21.d.
- The Report states that other jurisdictions implement more effective inclusionary housing programs in part by offering developers certain land use, zoning and permit privileges, and yet those options are summarily dismissed in the Baltimore context without adequate explanation.
- To make inclusionary housing work in Baltimore, the Report recommends that the City reduce the percentage of units that must be made affordable from 20%/10% to 10%/5% and to eliminate any requirement for units affordable at 30% AMI. This recommendation is inconsistent with the reality that the greatest unmet need for affordable housing in the City is for families whose incomes are below 30% AMI. Over 26,935 Baltimore City households at 30% AMI are paying more than 50% of their income toward rent and teeter on the edge of eviction.<sup>2</sup> If anything, an IH revision should find ways to increase the number of units affordable to residents below 30% AMI.
- Much of the analysis is premised on Figure 4, “Lifetime Subsidy Required Per Affordable Unit,” which does not reflect the actual hard costs of unit development. First, it is unclear how the Report arrived at the conclusion that the lifetime subsidy for developing a two-bedroom unit affordable at 30% AMI is \$347,781. This analysis does not take into account that the City should not be subsidizing the developer’s overhead, operating costs, and profit over the course of the unit’s life. At most, the City may want to compensate for the developer’s hard costs in building the unit only. Second, this analysis directly contradicts the statements of developers who participated in a previous task force on inclusionary housing circa 2017 led by then-Councilman Bill Henry. Developers on that task force admitted that a \$100,000 subsidy per unit would be fair compensation for creating additional affordable units because of the investment value of that \$100,000 over the course of unit’s usable life.
- The most disturbing part of the Report was the recommendation to grant developers an additional 15% tax abatement to include affordable units that would be on top of their already hefty High Performance Tax Credit, which cost the City over \$20 million in FY 2021. First, it is outrageous that the City has provided a tax credit to multi-family, market rate developers as a matter of right – without any analysis of need or equity and without any requirement that the developer include deeply affordable units in the development. Such developments are

---

<sup>2</sup> Baltimore City Dept. of Housing and Comm. Dev., Draft Consolidated Plan 2021-2025, at 23, <https://dhcd.baltimorecity.gov/sites/default/files/Public%20Comment%202020-2025%20Consolidated%20Plan%20-%20Annual%20Action%20Plan.pdf>

constructed primarily in the white L with tremendous public subsidies that have little-to-no benefit for those residents in the Black Butterfly. This is the opposite of equitable housing policy. The proposed 15% tax abatement would only deepen this inequity by creating a handful of affordable units at a highly inflated cost to the City and at incomes levels now raised to 60% or 80% of AMI that do not meet the overwhelming needs of Black, working-class families of Baltimore. The City should reject this proposed additional developer giveaway. The City should also end the \$20 million High Performance Tax Credit as soon as possible and redirect those funds to the City's Affordable Housing Trust Fund.

- The Report suggests that inclusionary housing is only viable in the “Core Submarkets” of Baltimore where there is already a robust housing market. This is, in large part, the white L in Baltimore. It is a strategy that leaves out the vast majority of the predominately Black city.
- The Report appears to indicate that it will recommend ways to require more extensive affirmative marketing of affordable units and increase accountability among developer/property managers to fulfill their obligations under the law, but those tools were not included in this interim phase of the Report.
- There is no discussion of the right of first refusal for the Housing Commissioner to buy units (and then assign them to HABC, a non-profit or land trust), how that could work and the costs (which should be considerably less than the 30 years calculated for developers).

Instead, the undersigned recommend that the City focus action on:

- Enforcing the existing ordinance through changes to DHCD's interpretation of the ordinance. Those suggested revisions to the current interpretation are detailed in the 2019 Memo. Most importantly, DHCD should consider the value of the major public subsidy or zoning change in assessing the monetary benefit to the developer. In light of that monetary benefit, the developer should not be granted a waiver or exception to the current IH affordable unit requirements in most cases.
- Alternatively, adopt a return on investment (ROI) test for major public subsidies rather than an offset test. Traditionally, ROI necessary for real estate project range from 8% to 20%. Major public subsidies, such as Tax Incremental Financing (TIF) of Port Covington or Harbor Point, should not be supporting ROI over a certain level (for example 10%) without a concrete public benefit in deeply affordable housing.
- Consider greater use of existing tenant-based subsidies, such as partnering to place project-based Housing Choice Vouchers administered by the Housing Authority of Baltimore City (HABC) in market-rate development in order to make those units affordable to residents below 30% AMI. Project based vouchers (PBV) could be set aside annually by HABC for IH developments. For instance, under current IH requirements, two vouchers would satisfy the “6% at 30% AMI” requirement for 30-unit development with a major subsidy. Six vouchers would cover a 100-unit development. This increases the housing choices and neighborhoods

available to residents with vouchers. The City should also require developers to ensure that a certain number of these 30% AMI units are UFAS compliant in order to increase opportunities for persons with disabilities.

- Reconsider whether the city has other incentives that it can provide to developers in the form of land use, zoning and permitting benefits that could bridge any gap in viability for affordable units. Very little development is done in Baltimore City without direct or indirect “subsidy.” The IH ordinance should capture the wide range of accommodations that are provided developers currently.
- Count only the additional hard costs of developing the affordable units, instead of subsidizing the developer’s profit and overhead over the life of the affordable unit. Alternatively, as suggested above, use an ROI standard for determine exemptions.
- Require developers to develop rental units that convert to co-operative or condominium type units to address rental housing’s lack of real estate “equity.” Partnerships with community-based organizations and other entities experienced in administering and managing such affordable housing units (including robust affirmative marketing and oversight) would also fulfill the Department’s mandate to operationalize equity in accordance with Ordinance 18-160.

Thank you for your consideration. We are available to discuss this matter further. Please contact Matt Hill, [hillm@publicjustice.org](mailto:hillm@publicjustice.org), 410-625-9409, ext. 229.

Regards,

ACLU of Maryland  
Baltimore Regional Housing Partnership  
Barbara Samuels  
Damien Haussling  
Disability Rights Maryland  
Homeless Persons Representation Project  
Lawyers Committee for Civil Rights Under Law  
Maryland Center on Economic Policy  
Partners for Dignity and Rights  
Public Justice Center  
United Workers

**RANDOM IDENTIFIER 11**

October 29, 2021

Department of Housing and Community Development  
City of Baltimore  
417 East Fayette Street  
Baltimore, Maryland 21202

Re: **Comments on Baltimore Inclusionary Housing Requirements Report (dated 8/23/21)**

To Whom it May Concern:

The Maryland Building Industry Association (MBIA) represents over 1,100 member firms and more than 100,000 individuals across the state, including home builders, remodelers, and developers; all of whom significantly contribute to economic development in Maryland. Our members provide homes for families, sustain neighborhoods, and create jobs for Marylanders. We appreciate this opportunity to provide comments in response to your consultants' Draft Interim Report on Baltimore's Inclusionary Housing Requirements Ordinance (the "**Report**").

As outlined in the Report, the City's inclusionary housing program (the "**IH Program**") needs significant changes to be impactful. As the Report concludes, the current IH Program is hobbled in part by statutory restrictions on how available funds can be spent, but primarily by the historic and continuing lack of City funds committed to the program.

The Report compares the City's IH Program, which relies on direct funding of units by the City, with a "traditional" program that utilizes incentives, typically in the form of property tax credits, to offset the costs of inclusionary units. In this era of severe funding constraints, the Report recommends that the City shift the program to this more "traditional" approach to avoid the need for direct City funding of inclusionary units. It also addresses the ordinance's thresholds on per-unit cost, above which thresholds units are ineligible for funding, as well as the effect of fairly deep income restrictions on inclusionary units which, while laudable, dramatically increase the additional cost of providing units.

Importantly, the Report makes some threshold determinations about market-rate development in Baltimore. It concludes that development is already challenging because of high development costs (led by an ultra-high property tax rate), and that incentives or subsidies have already been deemed necessary for such development even without regard to the IH Program requirements. With this already-challenging baseline, the Report then concludes that, in most cases, it is "infeasible" for these projects to also provide inclusionary units.

The Report ultimately suggests possible changes to the IH program, focusing (for further discussion) on a revised program including a 5-10% affordability set-aside supported by 15% tax abatements beyond any abatements or credits currently in effect. It also suggests that the IH Program, be focused in the Core Markets, having determined that it is infeasible to provide such units, even with additional tax incentives, in the Strong and Transitional Markets.

### **MBIA Positions and Recommendations**

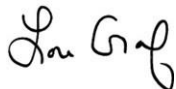
1. MBIA agrees with the Report that the cost of inclusionary housing units, while important to the City, cannot be borne by Baltimore development projects which are already confronting high costs and feasibility challenges.
2. MBIA agrees that, in the absence of direct payments, additional tax relief is a potentially viable way to account for the added cost of inclusionary housing units. We would need to work with the consulting team, the City, and our members, to see if the Report's suggested 15% credit would sufficiently offset the cost of an affordability set-aside, as well as whether the suggested 5-10% set-aside is the correct target.
3. If sufficient funding or incentives were available to support the related loss of revenue, MBIA supports the inclusion of lower-AMI units in the IH Program. However, we recognize that focusing on higher-AMI units achieves broader (if not deeper) affordability goals at a lower overall cost. That is an important balance to be struck as IH Program revisions are considered.
4. We look forward to further discussion about the Report's focus on the Core Markets as the only viable geography for a revised IH Program. For a variety of reasons, projects in these markets typically have the most expensive per-unit costs, and therefore may be a less-efficient way of providing units than finding a way to do so in other markets, especially the described Strong Markets.
5. The fee-in-lieu approach is touched on in the Report only as having potential to yield affordable units elsewhere in the City, in locations distinct from the affected development project. MBIA opposes a fee-in-lieu because it would impose a cost on a project that the Report has already concluded the project cannot bear. If there is no funding source to provide the units directly onsite, there is presumably no source to provide a fee-in-lieu for development of inclusionary units offsite.

---

Thank you for accepting these comments on behalf of MBIA. We remain committed to partnering with you to help the City of Baltimore address the affordable housing needs of its citizens.

If you have any questions about these comments and would like to discuss MBIA's position further, please do not hesitate to contact me at [lgraf@marylandbuilders.org](mailto:lgraf@marylandbuilders.org) or Isaac Ambruso at [iambruso@marylandbuilders.org](mailto:iambruso@marylandbuilders.org).

Sincerely,



Lori Graf, CEO

October 29, 2021

Department of Housing and Community Development  
City of Baltimore  
417 East Fayette Street  
Baltimore, Maryland 21202

Re: **Comments on Baltimore Inclusionary Housing Requirements Report (dated 8/23/21)**

To Whom it May Concern:

The Maryland Building Industry Association (MBIA) represents over 1,100 member firms and more than 100,000 individuals across the state, including home builders, remodelers, and developers; all of whom significantly contribute to economic development in Maryland. Our members provide homes for families, sustain neighborhoods, and create jobs for Marylanders. We appreciate this opportunity to provide comments in response to your consultants' Draft Interim Report on Baltimore's Inclusionary Housing Requirements Ordinance (the "**Report**").

As outlined in the Report, the City's inclusionary housing program (the "**IH Program**") needs significant changes to be impactful. As the Report concludes, the current IH Program is hobbled in part by statutory restrictions on how available funds can be spent, but primarily by the historic and continuing lack of City funds committed to the program.

The Report compares the City's IH Program, which relies on direct funding of units by the City, with a "traditional" program that utilizes incentives, typically in the form of property tax credits, to offset the costs of inclusionary units. In this era of severe funding constraints, the Report recommends that the City shift the program to this more "traditional" approach to avoid the need for direct City funding of inclusionary units. It also addresses the ordinance's thresholds on per-unit cost, above which thresholds units are ineligible for funding, as well as the effect of fairly deep income restrictions on inclusionary units which, while laudable, dramatically increase the additional cost of providing units.

Importantly, the Report makes some threshold determinations about market-rate development in Baltimore. It concludes that development is already challenging because of high development costs (led by an ultra-high property tax rate), and that incentives or subsidies have already been deemed necessary for such development even without regard to the IH Program requirements. With this already-challenging baseline, the Report then concludes that, in most cases, it is "infeasible" for these projects to also provide inclusionary units.

The Report ultimately suggests possible changes to the IH program, focusing (for further discussion) on a revised program including a 5-10% affordability set-aside supported by 15% tax abatements beyond any abatements or credits currently in effect. It also suggests that the IH Program, be focused in the Core Markets, having determined that it is infeasible to provide such units, even with additional tax incentives, in the Strong and Transitional Markets.

### **MBIA Positions and Recommendations**

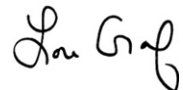
1. MBIA agrees with the Report that the cost of inclusionary housing units, while important to the City, cannot be borne by Baltimore development projects which are already confronting high costs and feasibility challenges.
2. MBIA agrees that, in the absence of direct payments, additional tax relief is a potentially viable way to account for the added cost of inclusionary housing units. We would need to work with the consulting team, the City, and our members, to see if the Report's suggested 15% credit would sufficiently offset the cost of an affordability set-aside, as well as whether the suggested 5-10% set-aside is the correct target.
3. If sufficient funding or incentives were available to support the related loss of revenue, MBIA supports the inclusion of lower-AMI units in the IH Program. However, we recognize that focusing on higher-AMI units achieves broader (if not deeper) affordability goals at a lower overall cost. That is an important balance to be struck as IH Program revisions are considered.
4. We look forward to further discussion about the Report's focus on the Core Markets as the only viable geography for a revised IH Program. For a variety of reasons, projects in these markets typically have the most expensive per-unit costs, and therefore may be a less-efficient way of providing units than finding a way to do so in other markets, especially the described Strong Markets.
5. The fee-in-lieu approach is touched on in the Report only as having potential to yield affordable units elsewhere in the City, in locations distinct from the affected development project. MBIA opposes a fee-in-lieu because it would impose a cost on a project that the Report has already concluded the project cannot bear. If there is no funding source to provide the units directly onsite, there is presumably no source to provide a fee-in-lieu for development of inclusionary units offsite.

---

Thank you for accepting these comments on behalf of MBIA. We remain committed to partnering with you to help the City of Baltimore address the affordable housing needs of its citizens.

If you have any questions about these comments and would like to discuss MBIA's position further, please do not hesitate to contact me at [lgraf@marylandbuilders.org](mailto:lgraf@marylandbuilders.org) or Isaac Ambruso at [iambroso@marylandbuilders.org](mailto:iambroso@marylandbuilders.org).

Sincerely,



Lori Graf, CEO

## RANDOM COMMENT ASSIGNMENT #48

Dan Pontius

I guess during the presentation, I didn't realize what a fairly tiny swath of the City the "Core" submarket is. It really just seems like the most tippy-top high-end housing areas in the City. The document says this typology is based on the City's latest Housing Market Typology, but I see that the Core submarket is actually just a portion of the top purple "A" submarket:

1. Could we get more insight into what distinguishes the Harbor/Penn Station "Core" submarket from the Roland Park/Mt. Washington portion of the "A" submarket? Why would Roland Park/Mt. Washington be included in the top submarket on the City's typology map, but not in this one?
2. My understanding is that the DC IZ program is almost the inverse of this -- applying to the majority of the City, with a relatively small portion exempt. Could the consultants lay out how traditional IZ can work in most of DC but not here? I realize the market is stronger, but is it also that the zoning is stricter, so that density bonuses work there?
3. Could the consultants lay out likely production of their proposal here in Baltimore compared to the production of DC's program? Perhaps looking at what this policy likely would have yielded in Baltimore compared to what DC's policy did yield during some recent range of years?
4. Is there any other city or county in the country that applies its traditional IZ program to such a small portion of its jurisdiction?

In general, I just think this is likely to look odd as a proposal (especially to advocates), and it would be good to know if Baltimore City is something of a unicorn nationally, and, if so, why, with specific comparisons.

I hope this is helpful, and I'm sorry it's so late. --Dan